No. 80-1904

In The

Supreme Court of the United States

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OCTOBER TERM, 1980

LILY DALE ASSEMBLY,

Petitioner,

vs.

GREGORY D. JOSEPHSON,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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June 8, 1981

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Question Presented for Review

Whether New York's long standing procedure for assessment, levy and enforcement of annual real property taxes, involving a description of each parcel and notice by publication of enforcement procedures, denies due process because it is general in scope and permits sale of any parcels within the county upon which taxes levied are unpaid, including those owned by persons unknown to the taxing authorities.

Statement of the Case

The New York appellate courts have determined that the assessment and sale of petitioner's property for nonpayment of taxes complied in all respects with New York law. Description of the premises for purposes of annual taxation was achieved by the use of a tax map that had been in existence for 10 years before this sale. The premises were accurately portrayed on the map, as confirmed by petitioner's own surveyor (R. 48-50), and the identifying numbers for the parcel were used on the roll, as required. (R. 26). However, the assessor did not know who owned the premises, so he made the entry "unknown" in the column provided for the name of the "owner, last known owner or reputed owner" on the roll. (R. 26). In fact, petitioner also did not know, or says it did not know, who owned the premises. (R. 45). It did know of the existence of the tax parcel on the map, however, because it submitted a bid for the property when the county offered it for sale. (R. 45). Its state of ignorance continued, petitioner says, until it had lost out to the higher offer submitted by respondent. Petitioner then checked its records and had the survey made, in the course of which it learned that it had become the owner of the premises in 1910. (R. 48-50). This led to a change of position. (R. 16-21). Since then, petitioner has been asserting that it was the duty of the assessor to know of petitioner's ownership, though petitioner did not, and that levy and enforcement could not take place unless petitioner received notice of the tax sale procedures by mail addressed to it by name. The New York appellate courts have rejected this contention, however, holding instead that the New York procedure of assessment against land involving identification of the parcel upon the roll, followed by publication of the notice of sale and of expiration of the period for redemption, meets the requirements of due process under the decisions of this Court. With respect to omission of name, the courts have held that statement of the name of the owner bears upon identification of the parcel only, and is only one part of identification, so that its omission does

not invalidate the levy or enforcement proceedings, if the parcel is otherwise adequately identified upon the roll. (R. 3b). The procedure followed here was not tax foreclosure, as petitioner states, but sale for non-payment conducted by a county treasurer. (R. 59). The Appellate Division granted summary judgment to respondent upon his counterclaim asserting validity of the tax title (R. 3a) and the Court of Appeals affirmed.

ARGUMENT

1. The state court finding of compliance with state statutes leaves for consideration only petitioner's assertion that those statutes do not afford due process with respect to notice. In making the assertion, petitioner avoids mention of the annual tax notice cases relied upon by the courts below. The foundation for the decisions of those courts cannot be so easily dismissed. This Court has sustained description of parcel and notice by publication statutes of the states in annual tax cases on many occasions. *Ballard* v. *Hunter*, 204 U.S. 241; *Leigh* v. *Green*, 193 U.S. 79; *DelCastillo* v. *McConnico*, 168 U.S. 672; *Winona & St. Peter Land Co.* v. *Minnesota*, 159 U.S. 526. See also, *North Laramie Land Co.* v. *Hoffman*, 268 U.S. 276. The cases cited have established the proposition that because statutes imposing annual taxes for the support of state functions are universally in force and general in application, landowners must take account of those facts in providing for the management of their property and safeguarding of their interests in it, and since owners can order their affairs to be informed of tax procedures of which there is published notice, the notice requirements may be framed in recognition of that fact. *North Laramie Land Co.* v. *Hoffman*, *supra*. Specifically, the decisions have established a due process standard, where taxes are levied against land, requiring that the roll contain a description of the land assessed from which the owner may identify it, so that he can learn of and discharge the annual levies. *Leigh* v. *Green*, *supra*. A requirement that the name of the owner shall be stated, if known, and that effort shall

be made to determine such ownership, does not change the standard if the statute also provides that the land is to be assessed even if the name of the owner is unknown. *DelCastillo* v. *McConnico, supra; Leigh* v. *Green, supra.* These authorities have been relied upon in structuring New York's assessment procedure. Tax maps, now required throughout the state, contain parcel numbers that are in turn used upon the tax roll. (Real Property Tax Law §502). All parcels are assessed, including those owned by persons unknown to the assessor. (R. 3b). The name of an owner is used, if known, but the parcel is not omitted if it is unknown, since the objective is to achieve universal coverage. Names assist in rapid identification of parcels, but ordinarily there will be no real problem of identification where a tax map is in use. The result is that names are reduced to insignificance in the assessment process. While petitioner complains that the parcel had not appeared upon the roll until 1974, this Court has held that no due process question arises from change or improvement in the methods of tax collection, if the new methods adopted afford due process. *League* v. *Texas,* 184 U.S. 156; *Leigh* v. *Green, supra.*

New York has left no doubt about its intention that its procedures shall not be impeded by an inability to learn an owner's name. Real Property Tax Law §504, subdivision 4, provides:

> "4. If in the preparation of the roll an error is made in the description of a parcel of real property or in entering or failing to enter the name of the owner, last known owner or reputed owner, such error or omission shall not prevent the levy, collection and enforcement of the payment of the taxes thereon if the parcel can be identified and located with reasonable certainty."

Of course, an assessment against land and parcel identification approach to taxation may not meet the needs of an owner unaware of how the parcel should look on the map and unaware of its ownership, but systems of taxation need not be designed to meet such needs. *Ballard* v. *Hunter, supra.*

Published notice of steps in the enforcement procedures is due process, because published notice is notice appropriate to the nature of the case. With reference specifically to New York's procedure, this Court has considered a due process attack and has declined to review a decision of the Court of Appeals. In *Botens* v. *Aronauer*, 32 N.Y.2d 243 (1973), that Court had applied the authority already cited in holding that notice of enforcement of annual taxes by publication, without mailing, affords due process. The decision was reached over the contention of the owners that only notice by mail would provide due process under the one-time exercise, non-tax cases discussed below. The appeal to this court was dismissed for want of a substantial federal question. (414 U.S. 1059). That disposition was in keeping with a denial of certiorari in an earlier case raising the same questions. *City of New Rochelle* v. *Echo Bay Waterfront Corporation*, 268 App. Div. 182, affd. 294 N.Y. 678, certiorari denied 326 U.S. 720. The courts of other states where procedures similar to those in use in New York have been adopted have also sustained the procedures. See *City of Newark* v. *Yeskel*, 5 N.J. 313, *Security Inv. Co. of Riverside* v. *Douglas*, 76 Cal. App. 2d 592, *Garthwaite* v. *Mayor and City Council of Baltimore*, 181 Md. 362; *Legal Record Publishing Co.* v. *Auditor General*, 281 Mich. 578; *Shapiro* v. *Hruby*, 21 Ill. 2d 353; *Sanchez* v. *James*, 209 Md. 266.

2. In contending that *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, and *Schroeder* v. *City of New York*, 371 U.S. 208, the one-time exercise, non-tax cases, should be allowed to control this annual tax case, petitioner presents an argument that has been advanced and rejected on several occasions. Of course, *Botens* v. *Aronauer, supra*, specifically rejected it. All of the annual tax cases of the states cited above and decided since 1950 have necessarily rejected it. More significantly, the *Mullane* court, itself, rejected it. Mr. Justice Jackson's opinion cited with approval both *Ballard* v. *Hunter, supra*, 204 U.S. 241, and *Huling* v. *Kaw Valley R. & I. Co.*, 130 U.S. 559, as cases in which the Court had properly determined that notice by publication was

appropriate to the nature of the case. Not deterred by any of this, petitioner contends that the standard of *Mullane* and like cases not only should be adopted here, but should be improved upon by requiring investigation to reach the factual circumstances of this case. This investigation, presumably, would determine identity of the owner to permit notice by mail to be given. In *Mullane*, the Court decided that investigation would not be required to determine names and addresses of beneficiaries unknown to the trustee beyond those whose identity was "at hand." in *Schroeder* there is no indication that the court intended to impose a different standard when the phrase used by Mr. Justice Stewart to describe those required to be notified by mail was parties "known or very easily ascertainable." In this case not only was petitioner's ownership unknown to the assessor, but extensive investigation would have been required to determine it. Petitioner's deed was so ambiguous in describing the premises conveyed that even petitioner says it could not be understood without the help of a surveyor. Without a name there was no way to use an index to search back to the deed. It would have been senseless to attempt to make a general examination, without an index, of the thousands of deeds recorded in the county clerk's office. To go back to the beginning of records in the county and then work forward from the last common ownership would have required that the assessor start in the early 1800s and search for 100 years or more to reach this deed. To understand the starting point in the description, he would have been required to do the same for the adjoining parcel once owned by Theodore Alden. (R. 22-23). And so on. Moreover, unless this search had met with success, the parcel involved here would have remained untaxed, apparently forever. Such a result makes the logic suspect. Record ownership obviously is not the test. Somewhere records will end in someone's apparent ownership of every title. But as applied to taxes, a standard precluding levy and enforcement unless the assessor finds that elusive someone extends logic at the expense of common sense and, of course, at the expense of all other taxpayers.

Petitioner's contention concerning record ownership is not new. In the *Ballard*, *DelCastillo* and *Leigh* cases cited above, all dealing with annual taxes, the Court was considering the claims of owners or lienors whose interests appeared of record. That fact did not protect them from the consequences of nonpayment. Those decisions are directly opposed to petitioner's contention. Of course, *Botens* v. *Aronauer*, *supra*, 32 N.Y.2d 243, app. dism. 414 U.S. 1059, is opposed also. There the names of the owners were not only of record, but also appeared upon the tax roll, yet no substantial federal question was presented.

3. The New York statutes provide for appropriate notice of annual tax enforcement. Of course, petitioner did not benefit from the application of the permitted standard, but petitioner presents a special case. Landowners do not often become unaware of their ownership. The standard presupposes attention to the consequences of land ownership, rather than inattention. It may properly do so. Petitioner's attempt to import standards of notice appropriate to the nature of a different type of case and to modify them after the importation to fit its own needs does not present a substantial federal question.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APPENDIX

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Real Property Tax Law §304. Subject of Assessment.

All assessments shall be against the real property itself which shall be liable to sale pursuant to law for any unpaid taxes or special ad valorem levies.

Real Property Tax Law §500. Ascertainment of Facts For Assessment.

On or before the first day of May in each year, the assessors in each city and town shall ascertain by diligent inquiry all the real property located therein and the names of the owners thereof.

Real Property Tax Law §502. Form of Assessment Roll.

1. The form of assessment roll shall be prescribed or approved by the state board, in accordance with the requirements contained in this section.

2. Provision shall be made with respect to each separately assessed parcel of real property for the entry, in appropriate columns, of the name of the owner, last known owner or reputed owner and a description sufficient to identify the same, including the surnames of the abutting property owners and the names of the abutting streets or highways, the approximate number of square feet, square rods or acres contained therein or a statement of the linear dimensions thereof. When a tax map has been approved by the state board, reference to the lot, block and section number or other identification numbers of any parcel on such map shall be deemed a sufficient description of such parcel.

3. The assessment roll shall contain a column for the entry with respect to each separately assessed parcel of the assessed valuation of the land exclusive of any improvements, followed by a column for the entry of the total assessed valuation. Only the total assessment, however, shall be subject to judicial review provided by article seven of this chapter.

4. Provision shall be made for the entry of assessments of special franchises in a separate part of the roll, together with the name of the owner and a description thereof sufficient to identify the same.

5. Provision shall be made for the entry of assessments of parcels of real property wholly exempt from taxation in a separate part of the roll. If a parcel of real property is partially exempt, it shall be entered with the taxable property, with the amount of the exemption shown in a separate column. Property exempt from taxation in a limited amount shall be entered with the taxable property although the amount of the exemption equals the assessed valuation.

6. The form of assessment roll prescribed or approved for use in towns shall provide for the entry, in appropriate columns, of the name of the village, if in a village, the number of the school district and the name or number of any special district in which special ad valorem levies are made for district purposes, in which each parcel of real property and each special franchise described on such roll is situated and shall also provide for the entry of apportionments of special franchise assessments made pursuant to section six hundred sixteen of this chapter and appropriate entries for parcels separately assessed for school district or special district purposes.

7. Provision shall also be made for the entry of the amount of taxes levied for county, city or town purposes and the amount of any special ad valorem levies imposed for special district purposes against each parcel of real property and each special franchise, together with the date of payment thereof and such other items and details as may be required.

Real Property Tax Law §504. Preparation of Assessment Roll.

1. The state board shall adopt rules and regulations for the preparation and use of the assessment roll and shall advise with and instruct assessors and other officers as to their duties with respect thereto. The assessors shall prepare the roll in the form prescribed or approved by the state board and in accordance with the rules and regulations adopted by such board relative thereto.

2. Where a parcel separately assessed for general municipal purposes lies partly within a special district or school district the portion within such special district or school district shall be separately assessed for special district or school district purposes, as the case may be, except as otherwise provided by section thirteen hundred ten of this chapter.

3. Real property of a railroad company which has elected to have the provisions of title two-a of article four of this chapter apply to such company shall be assessed in accordance with the provisions of section four hundred eighty-nine-c of this chapter.

4. If in the preparation of the roll an error or omission is made in the description of a parcel of real property or in entering or failing to enter the name of the owner, last known owner or reputed owner, such error or omission shall not prevent the levy, collection and enforcement of the payment of the taxes thereon if the parcel can be identified and located with reasonable certainty.